

SERVED: November 25, 1992

NTSB Order No. EA-3742

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of November, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12205
v.)	
)	
JOSEPH KENNETH WELLS,)	
)	
Respondent.)	
_____)	

ORDER

On July 9, 1992, Administrative Law Judge William R. Mullins orally granted a motion by the Administrator to dismiss for lack of prosecution respondent's appeal from an order of the Administrator suspending his commercial pilot certificate for 180-days for his alleged violations of sections 91.13(a), 91.111(a), and 91.209(a) of the Federal Aviation Regulations, "FAR," 14 CFR Part 91. The Administrator's motion was based on respondent's failure to appear on that date for an evidentiary hearing on the charges against him. Arguing that he was unable to attend the hearing because of a medical emergency, respondent in effect asks that we vacate the law judge's decision and remand the case for scheduling of another hearing.¹ We will grant the

¹The law judge not only granted the motion to dismiss, he "sustained" the order of suspension, with respect to which no evidence had been offered. That portion of the law judge's decision is clearly a nullity, for the Board has no authority to affirm an order of the Administrator that has not been shown to

request, to which the Administrator has filed no reply.

The affidavit and supporting documentation accompanying respondent's request for a new hearing reveals that his wife became seriously ill during the late afternoon on the 8th of July and that respondent left his employment early that day to take her to a hospital where he remained with her overnight. Respondent's efforts to contact the law judge early in the morning of the 9th, the date scheduled for the hearing, were unsuccessful, as the law judge was apparently already en route from Dallas, Texas to the West Palm Beach, Florida hearing site.

In our judgment, these circumstances serve to excuse respondent's nonappearance at the hearing and to justify affording him another opportunity to introduce evidence in defense of the Administrator's charges.²

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's request for rehearing is granted, and
2. The case is remanded for a new hearing.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)

be required by safety in air commerce or air transportation and the public interest. See Section 609(a) of the Federal Aviation Act of 1958, as amended, 49 USC § 1429(a).

²Because respondent so clearly appeared to have good cause for his nonappearance, the Board's General Counsel, on ascertaining that the Administrator would not object to a new hearing, requested the Office of Administrative Law Judges to return the case to the law judge for appropriate action. Nevertheless, the law judge, on October 2, 1992, issued an order asserting that he was powerless to rehear the matter while an appeal was pending before the Board. Since, however, the Board's General Counsel speaks for the Board on procedural matters arising after the initial decision stage of a proceeding, see, 49 CFR 800.24(b), the law judge's belief that he could not act without an actual Board order remanding the case was mistaken.